

### **III. REMARKS AND ARGUMENTS**

#### **A. Status of the Claims**

The Office Action has been carefully considered. Claims 15, 17-19 and 21-31 are currently pending in the application. By this amendment, claims 15 and 18 are amended. No new matter has been added by way of amendment.

Applicants respectfully submit that all pending claims are allowable over the cited references in view of the amendments and arguments made herein, and respectfully request reconsideration and allowance of the same.

#### **B. Rejections Under 35 U.S.C. § 112, First Paragraph.**

Claims 18-31 have been rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement. Office Action at 2. Applicants have amended independent claim 18 to remove the requirement that the bottom surface of the container is concave to the body before it is filled and sealed. Applicants believe that claims 18-31, as amended, comply with the written description requirement. Therefore, Applicants respectfully request reconsideration and withdrawal of these claim rejections.

#### **C. Rejections Under 35 U.S.C. § 103.**

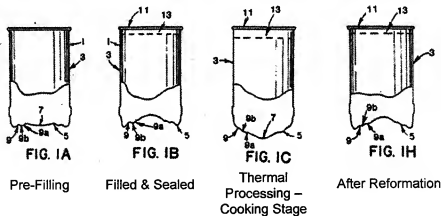
Claims 15 and 17 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 4,667,454 to McHenry *et. al.* ("McHenry"). Office Action at 3. The Applicants respectfully traverse this rejection and request reconsideration and allowance of the pending claims in view of the following remarks.

To support a *prima facie* case of obviousness, the prior art references must teach or suggest all the claim limitations, or otherwise motivate one of ordinary skill in the art to modify the prior art references to arrive at the claimed invention with some degree of predictability. *See* M.P.E.P. § 2141 *et seq.* The operative question in the obviousness inquiry is "whether the improvement is more than the predictable use of prior art elements according to their established functions." 550 U.S. at \_\_\_, 127 S.Ct. at 1740; M.P.E.P. § 2141. Applicants respectfully submit that McHenry does not teach or suggest all of the elements of claims 15 and 17, as amended, and therefore does not support a *prima facie* case of obviousness.

Independent claim 15 recites a method for forming a plastic container for packaging a hot-filled food product, wherein the resultant plastic container comprises a mouth, a body cavity

formed from a bottom surface and a container wall between the mouth and the bottom surface. By this amendment, Applicants have amended claim 15, consistent with the specification, to further clarify the claimed method. As amended, claim 15 now recites the step of forming into the bottom surface a "selectively collapsible feature" that "maintains its shape while the container is filled with a hot-filled food product at temperatures of about 160°F to about 200°F and thereafter sealed"; and "deforms after the container is filled with hot food product and sealed, upon the formation of a pressure differential whereby the interior of the sealed container is about 2.5 psi to about 10 psi lower than atmospheric pressure; wherein the curved bottom surface deforms by flexing inward toward the body cavity." This claim amendment is fully supported by the application as originally filed, such as, for example, on page 11, lines 4-10, and page 18, lines 2-4.

As we understand it, McHenry teaches a method for obtaining a package that, after filling and sealing of the package, expands during thermal sterilization processing of the contents, and thereafter contracts upon cooling of the package and its contents (referred to as "reformation"). See McHenry, col. 4, ll. 10-47. By way of illustration, Figures 1A, 1B, 1C, and 1H of McHenry are reproduced below.



These figures illustrate the package undergoing changes in response to thermal processing conditions. As explained in the specification, the McHenry package initially contracts (see Figs. 1A → 1B) upon filling and sealing of the package with a food product. When the package is cooked during thermal processing, the package expands (see Fig. 1C). McHenry, col. 5, ll. 13-17, 36-39. After cooking of the package and contents, the McHenry package must be "reformed" to bring the package back to about the same configuration as the filled and sealed package. *Id.* col. 5, ll. 33-35. McHenry explains that after the package expands during the

cooking cycle it "must therefore be reformed to attain an acceptable bottom configuration. The bulged bottom will not return to its original configuration merely by eliminating the pressure differential across the container wall." *Id.* at col. 8, ll. 9-14. Rather, McHenry explains that an additional "reformation" step must be taken to return the container to its prior, non-expanded shape. *Id.* at col. 8, ll. 18-27. For example, the bottom wall may be reformed by imposing external pressure to the package after cooking, but before cooling, while the package is still at a "reformable temperature," i.e., softened. *Id.* at col. 8, ll. 28-35.

McHenry fails to teach or suggest a method of forming a plastic container, including the step of forming a selectively collapsible feature, wherein the selectively collapsible feature is configured to retain its thermoformed shape while the container is filled with a hot food product, and to deform after the container is filled and sealed, upon the formation of a pressure differential whereby the interior of the sealed container lowers to about 2.5 to about 10 psi lower than atmospheric pressure, as recited in the pending claims. The McHenry container is formed so that the package will expand when its contents are cooked, and then contract to its pre-expanded shape and volume, rather than collapsing to a smaller volume. Moreover, McHenry explains that the McHenry container will not return to its original configuration merely by eliminating pressure differentials - rather an extra reformation step is required to physically reform the container, while the container is still softened and pliable.

In contrast, the present application provides method of providing a collapsible point in the bottom of the container, wherein the collapsible point is controllable by the manufacturing process. Specification, page 6, lines 18-20. The manufacturing process provides a controlled collapsible point that enables the container to withstand pressure differentials, such as those incurred after hot-filling and during transport of the container to varying altitudes, without deforming the container walls. *Id.* at page 8, lines 9-11. The collapsible point may be formed so that it is hidden from view. *Id.* at page 10, lines 17-20. The specification explains that the collapsible point may be formed by varying the surface thickness of the container in a pre-selected surface (*id.* at page 11, lines 11-13; page 12, lines 13-15), or providing a surface design to enhance the propensity of the bottom to collapse selectively over the walls (*id.* at page 18, lines 5-6). Thus, the selectively collapsible point contracts without requiring an additional reformation step. As a result, this method of producing a container results in raw material costs. *Id.* at page 20, lines 5-7.

McHenry fails to teach or suggest a method of forming a container, including the step of forming such a selectively collapsible feature. For at least the foregoing reasons, Applicants respectfully submit that claims 15 and 17 are patentable over McHenry. Therefore, the Applicants respectfully request reconsideration and withdrawal of these claim rejections.

**IV. CONCLUSION**


Applicants respectfully submit that the application is in condition for allowance. As such, Applicant respectfully requests withdrawal of the rejections, and an indication of allowance of the application. If any outstanding issues remain, the Examiner is invited to telephone the undersigned at the number listed below.

Submitted herewith is a petition for an extension of time, including authorization to charge associated fees to the undersigned's deposit account. Applicants believe that no additional fees are required with this submission. In the event of a variance between the amount authorized and fees determined by the USPTO, please charge such fees to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,  
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